

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
Case No. 20-CV-954-WO-JLW**

FARHAD AZIMA,

Plaintiff,

v.

NICHOLAS DEL ROSSO and VITAL
MANAGEMENT SERVICES, INC.,

Defendants.

**CONSENT MOTION FOR
APPOINTMENT OF SPECIAL
DISCOVERY MASTER
UNDER RULE 53**

Plaintiff Farhad Azima and Defendants Nicholas Del Rosso and Vital Management Services, Inc. (collectively, “the Parties”) respectfully move this Court under Rule 53 of the Federal Rules of Civil Procedure to appoint a Special Master to assist the Parties to regulate discovery for the remainder of this case.

Under Rule 53(a) of the Federal Rules of Civil Procedure, the Court may appoint a Special Master to (1) perform duties consented to by the parties, and (2) address pretrial matters that cannot be effectively and timely addressed by an available Judge in the District. *See* Fed. R. Civ. P. 53(a)(1)(A), (C). Furthermore, the Court has the inherent authority to appoint a Special Master when it is “essential” to the administration of justice. *See, e.g., Trull v. Dayco Products, Inc.*, 178 F. App’x 247, 251 (4th Cir. 2006). Special Masters should be appointed only in limited circumstances, though: “A pretrial master should be appointed only when the need is clear.” Fed. R. Civ. P. 53(a)(1) (advisory committee’s note to 2003 amendment).

This case is ripe for the appointment of a Special Master to address several discovery issues, as demonstrated by the procedural history. As the Court is aware, there have been numerous discovery disputes on several different occasions, including disputes about the extent to which the attorney-client privilege and attorney work product doctrine applies to certain discovery in the case. The Parties agree that there is a need for expedited review and consideration of these types of issues and that the appointment of a Special Master would aid the parties in the litigation of this case and would benefit the administration of justice.

On October 27, 2023, the Parties entered into a written agreement about the appointment of a Special Master in this case. *See* Exhibit A (Joint Agreement Regarding Special Master). After entering into this Agreement, the Parties consulted with North Carolina Business Court Judge Jim Gale, the selected mediator in this case, about candidates to serve as a Special Master if appointed by the Court. After consulting with the Parties and reviewing a number of candidates, Judge Gale selected Alice Richey, Esq., of the Alexander Ricks law firm in Charlotte, North Carolina, to serve as the Special Master if appointed by the Court.

The Parties submit that Ms. Richey would be appropriate to serve as a Special Master in this case. Ms. Richey is a member of the Mecklenburg County Bar and has practiced law in North Carolina since 1986. She has extensive experience in civil litigation matters and is a member of the American Arbitration Panel of Commercial Arbitrators. Ms. Richey has consulted with Judge Gale about this matter and has agreed to serve as a Special Master in this case if appointed by the Court. Ms.

Richey's proposed hourly rate for her services in this matter is \$500.00 per hour plus costs and expenses, which the Parties agree is reasonable and appropriate. Ms. Richey has also executed an affidavit affirming that she is not subject to disqualification in this matter under 28 U.S.C. § 455. *See* Exhibit B (Affidavit of Alice Richey). Prior to filing this Consent Motion, the Parties provided Ms. Richey with a copy of the Motion and Proposed Order for her review and can inform the Court that Ms. Richey has no objection to the Parties' proposed procedure for the Special Master's work in this case.

WHEREFORE, the Parties respectfully request that the Court appoint Alice Richey, Esq., as a Special Master in this case pursuant to Rule 53 in accordance with the agreement of the parties and to grant such other and further relief as is fair, reasonable, and appropriate.

This, the 22d day of December, 2023.

WOMBLE BOND DICKINSON (US) LLP

/s/ Ripley Rand

Ripley Rand

North Carolina State Bar No. 22275

Christopher W. Jones

North Carolina State Bar No. 27265

555 Fayetteville Street, Suite 1100

Raleigh, North Carolina 27601

Phone: 919-755-2100

Fax: 919-755-2150

Email: ripley.rand@wbd-us.com

chris.jones@wbd-us.com

MILLER & CHEVALIER CHARTERED

Kirby D. Behre (*pro hac vice*)
Timothy P. O'Toole (*pro hac vice*)
Lauren E. Briggerman (*pro hac vice*)
Ian Herbert (*pro hac vice*)
Calvin Lee (*pro hac vice*)
Cody Marden (*pro hac vice*)
900 16th Street, NW
Washington, D.C. 20006
Telephone: (202) 626-5800
Fax: (202) 626-5801
Email: kbehre@milchev.com
Email: totoole@milchev.com
Email: lbriggerman@milchev.com
Email: iherbert@milchev.com
Email: clee@milchev.com
Email: cmarden@milchev.com

Counsel for Plaintiff

-and-

/s/ John E. Branch, III

John E. Branch, III

Brandon S. Neuman

Jeffrey M. Kelly

Nathaniel J. Pencook

Nelson Mullins Riley & Scarborough, LLP

301 Hillsborough Street, Suite 1400

Raleigh, NC 27603

john.branch@nelsonmullins.com

brandon.neuman@nelsonmullins.com

jeff.kelly@nelsonmullins.com

nate.pencook@nelsonmullins.com

Tel.: 919.329.3800

Fax.: 919.329.3799

Samuel Rosenthal, Esq.

Nelson Mullins Riley & Scarborough LLP

101 Constitution Ave NW, Suite 900

Washington, DC 20001

sam.rosenthal@nelsonmullins.com

Tel.: 202-689-2951

Fax: 202-689-2860

Counsel for Defendants

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
Case No. 20-CV-954-WO-JLW**

FARHAD AZIMA,

Plaintiff,

v.

NICHOLAS DEL ROSSO and VITAL
MANAGEMENT SERVICES, INC.,

Defendants.

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send electronic notification of this Notice to the following attorneys:

Brandon S. Neuman, Esq.
John Branch, III, Esq.
Jeffrey M. Kelly, Esq.
Nathaniel J. Pencook, Esq.
NELSON MULLINS RILEY & SCARBOROUGH, LLP
301 Hillsborough Street, Suite 1400
Raleigh, NC 27603
brandon.neuman@nelsonmullins.com
jeff.kelly@nelsonmullins.com
nate.pencook@nelsonmullins.com
john.branch@nelsonmullins.com
Tel.: 919.329.3800
Fax.: 919.329.3799

Samuel Rosenthal, Esq.
Nelson Mullins Riley & Scarborough LLP
101 Constitution Ave NW, Suite 900
Washington, DC 20001
Tel.: 202-689-2951
Fax: 202-689-2860
sam.rosenthal@nelsonmullins.com
Counsel for Defendants

John C. Quinn, Esq.
Sean Hecker, Esq.
David Gopstein, Esq.
Mark Weiner, Esq.
Kaplan Hecker & Fink LLP
350 Fifth Avenue, Suite 63rd Floor
New York, NY 10118
Email: jquinn@kaplanhecker.com
Email: shecker@kaplanhecker.com
Email: dgopstein@kaplanhecker.com
Email: mweiner@kaplanhecker.com
Tel.: 212-763-0883
Fax: 212-564-0883

Kearns Davis, Esq.
Daniel D. Adams, Esq.
Brooks Pierce McLendon Humphrey & Leonard LLP
PO Box 26000
Greensboro, NC 27420-6000
Email: kdavis@brookspierce.com
Email: dadams@brookspierce.com
Tel.: 336-373-8850
Fax.: 336-378-1001

Counsel for Dechert LLP

Kieran Shanahan, Esq.
Shanahan Law Group
128 East Hargett Street, Suite 300
Raleigh, NC 27601
Tel.: 919-264-7515
Email: kieran@shanahanlawgroup.com

Counsel for Shanahan Law Group and Craig T. Evers

Richard S. Glaser, Esq.
Parker Poe Adams & Bernstein LLP
Bank of America Tower
620 S. Tryon St., Suite 800
Charlotte, NC 28202
Tel. (704) 372-9000
Fax. (704) 334-4706
Email: rickglaser@parkerpoe.com

Nana Asante-Smith, Esq. 41073-510
Parker Poe Adams & Bernstein LLP
PNC Plaza
301 Fayetteville Street, Suite 1400
Raleigh, NC 27601
Tel: 919.828.0564
Fax: 919.834.4564
Email: nanaasantesmith@parkerpoe.com

Counsel for Christopher Swecker and Christopher Swecker Enterprises, LLC

Counsel for Plaintiffs certify that they have also served this document and the Exhibits attached thereto via email to Alice Richey, Esq., at the following email address: alice@alexanderricks.com.

This, the 22d day of December, 2023.

WOMBLE BOND DICKINSON (US) LLP

/s/ Ripley Rand

Ripley Rand

North Carolina State Bar No. 22275

555 Fayetteville Street, Suite 1100

Raleigh, NC 27601

Telephone: (919) 755-8125

Facsimile: (919) 755-6752

Email: ripley.rand@wbd-us.com

Counsel for Plaintiff